

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

JOANNE M. ROYER,

Plaintiff,

v.

BLUE CROSS BLUE SHIELD OF
MASSACHUSETTS, INC., BLUE
CROSS BLUE SHIELD LONG-TERM
DISABILITY BENEFIT PLAN, a/k/a
OMNIBUS WELFARE BENEFITS
PLAN, KEMPER NATIONAL
SERVICES, INC., BROADSPIRE
SERVICES, INC., AND SHELDON
MYERSON, M.D.,

Defendants.

**CIVIL ACTION NO:
NO: 05-CV-10448-GAO**

**DEFENDANTS' MOTION TO DISMISS COUNT III
OF THE PLAINTIFF'S SECOND AMENDED COMPLAINT**

Blue Cross Blue Shield Long-Term Disability Benefit Plan ("the Plan"), Kemper National Services, Inc. ("KNS"), Broadspire Services, Inc. ("Broadspire") and Sheldon Myerson, M.D. ("Dr. Myerson"), defendants in this matter, move to dismiss Count III of the plaintiff's Second Amended Complaint, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, and as grounds therefore, state as follows:

Count III of the plaintiff's Second Amended Complaint attempts to state a cause of action against various defendants for their alleged failure to provide ERISA Plan documents under §502(c) of ERISA, 29 U.S.C. §1132(c). However, the plaintiff may state such a claim only against the Plan Administrator of the ERISA Plan. The Plan and the other defendants, other than the Plan Administrator, cannot be found liable under that section. Therefore, for reasons stated more fully in Defendants' Memorandum in Support of Their Motion to Dismiss Count III of the

Plaintiff's Second Amended Complaint, which is filed herewith, this Court must dismiss Count III as to those defendants.

Defendants Blue Cross Blue Shield Long-Term Disability Benefit Plan, Kemper National Services, Broadspire Services and Sheldon Myerson, M.D., therefore respectfully request that this Court dismiss Count III of the plaintiff's Second Amended Complaint as to those defendants pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure.

CERTIFICATION UNDER LOCAL RULE 7.1(A)(2)

Counsel for the defendants, David F. Schmidt, conferred with plaintiff's counsel on August 4, 2005 concerning the issues presented by this motion and have attempted, without success, to resolve or narrow the issue.

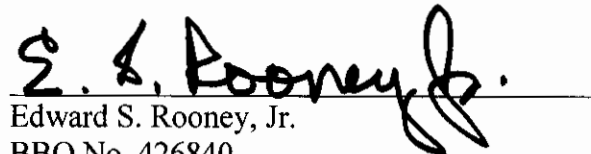
REQUEST FOR ORAL ARGUMENT

Defendants believe that oral argument may assist the court and wish to be heard and therefore request oral argument.

Respectfully submitted,

BLUE CROSS BLUE SHIELD LONG-TERM
DISABILITY BENEFIT PLAN, KEMPER
NATIONAL SERVICES, INC., BROADSPIRE
SERVICES, INC. and SHELDON MYERSON, M.D.

By their attorneys:



Edward S. Rooney, Jr.
BBO No. 426840

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& MELLOTT, LLC
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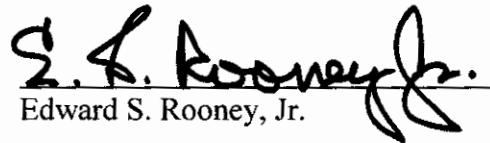
DATED: August 4, 2005

OF COUNSEL:

David F. Schmidt
CHITTENDEN, MURDAY & NOVOTNY LLC
303 West Madison Street, Suite 1400
Chicago, IL 60606
312-281-3600

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by overnight mail this 4th day of August, 2005.


Edward S. Rooney, Jr.